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(Note: The following articles were intended to cover the main points of criticism of the Prime Minister's Native Bills only, and they are now circulated for the information of Joint Councils, Native Welfare Societies, etc. A lengthy Memorandum on the Land Bill, prepared by the Johannesburg Joint Council of Europeans and Natives, is now in the Press, and will be circulated shortly. (J.D.R.J.)

THE PRIME MINISTER'S NATIVE BILLS

by

J. D. Rheinallt Jones.

(1).

General Hertzog has expressed surprise - and some regret - that there has been so little criticism on his racial Bills. Let him have but a little patience and he will be rewarded. For when the full significance of his proposals is realised in the country, there will be criticism and protest enough.

Careful study of the Bills is necessary before opinion of any value can be expressed. One wonders how the recent farmer's conference was able to pronounce upon the Bills since we are told that few, if any, had read the Bills before the conference. And one wonders too, how the many meetings which various Ministers have been addressing were able, by a show of hands, to declare in favour of these measures. It may be, of course, that our press reports have been inadequate and that Ministers have been able to explain the Prime Minister's proposals with unexampled lucidity - assuming too, that they themselves have read and studied them.

South Africa is at the parting of the ways, at the cross-roads of decision, in regard to racial relationships. English-South African and Afrikander, Bantu, Indian and Eur-African: what shall be their social, economic and political relationships one with the other, each with all? The Government has chosen to raise issues which bring racial passions to the surface, and what the end will be one hardly dares to prophesy.

But now that these problems of racial adjustment have been thrust before us by the Government's proposals - e.g. the Colour Bar Act, the Class Areas Bill and the Prime Minister's four Bills - we must be prepared to examine the challenges thus hurled down before us and to give some sort of reply. This and the succeeding articles will

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endeavour to do both in the case of General Hertzog's Bills.

As the average citizen has little patience with a lengthy and involved account of any legislation, we must content ourselves with a general examination of the measures. And as the Natives Land Bill seems to be the foundation of General Hertzog's policy (vide his Smithfield Speech), let us take that first.

The essence of the Natives Land Bill is the separation and segregation of European and Bantu ownership land. The first step in this direction was taken in 1913 when the Natives Land Act was passed which

(1) Placed certain Native areas (usually known as Locations) in a schedule by themselves. Only Natives could own or hire land in these areas, which are in most cases, densely populated by the Native people.

(2) Prevented Natives outside these areas from buying or hiring land from Europeans, except with the special approval of the Governor General.

(3) Prevented Europeans from buying or hiring from Natives, except with the special approval of the Governor General.

These prohibitions were to continue until Parliament, acting upon the report of a Commission to be appointed, should have set aside areas where (a) Natives only could buy or hire land, and (b) where Europeans only could do so.

In 1913 the Commission was appointed under the Chairmanship of Judge Sir W.H. Beaumont, and its report was published in 1916. There was an immediate outcry against its recommendations from both Europeans and Natives. The former said that the proposed Native areas were too liberal, while the Natives drew attention to the large proportion of arid lands of the total areas set apart for Native occupation.

In 1917 the Government appointed five Committees (known as the "Local Committees") to examine the Beaumont areas, which by now were incorporated in a Native Affairs Administration Bill, and to report generally upon the areas which should be set aside. These Committees were composed of men who had special knowledge of the conditions within the districts covered by their particular Committee, and their recommendations differed in many respects from the "Beaumont areas".

It is important to remember that both the Beaumont Commission and the Local Committees worked upon the assumption that additional areas were to be set aside which would in course of time become respectively Native or European areas entirely. In this way, while the Native people were being restricted to a maximum amount of additional land, that maximum was also the minimum.

These reports based their recommendations upon Native needs for the following ten years. This period has now expired, but the areas remain the same.

Neither set of recommendations ever became law, but in practice the Government departments have observed the recommendations, particularly where the two reports coincided. In this way a Native desirous of purchasing a farm in a "Recommended Native Area" from a European, was able to secure the Government's consent; while Europeans were not able to purchase Native lands in these areas.

But now General Hertzog in his Land Bill has gone back upon the main principle of the recommended Native area. Instead, he proposes th throw these areas open to competition.

While a Native may acquire land from a European in these areas, so also may another European. Not only will the Native have to compete in the open market with Europeans who ,are economically infinitely better able to buy, but also the Native will have to persuade the European owner to overcome white sentiment which is opposed to the sale of land to Natives.

The poor draughtsmanship of the Bill is such that, while the Section I would indicate that in these areas Europeans will not be able to acquire land from Natives, elsewhere in the Bill the opposite is provided for.

If, however, these areas - now to be known as released areas - remain Europeanised, and Native needs have not been satisfied, Parliament may "release" other areas for competition, and so on to the end of available land: provided that no land may become Native owned which is wholly surrounded by European owned lands, (nor similarly may a European buy an "island farm"). Only an examination of the areas upon a coloured map will disclose how easy it will be to block Native expansion under this proviso. By the retention of a line of farms around the boundaries of a scheduled Native area, Europeans can effectively prevent Natives deriving advantage from the releasing of the areas.

There seems to be a popular idea that General Hertzog has found a way by which the Native people are to be "given" more land. Not only is this untrue, but this Bill makes the position actually worse than under the "Beaumont and Committee"reports. The Native people are to be restricted to a certain maximum "morgenage" of land, while the real minimum are the present hopelessly overcrowded areas occupied by Natives.

This is the first and fundamental defect in the Bill, and one that responsible and fair-minded Europeans will find impossible to overlook. In his anxiety to force the pace of racial legislation, in his desire to persuade the Bantu people that he can offer them material advantages in lieu of the Cape franchise, General Hertzog has failed to provide a lock for the treasure box.

There is another important fact to be kept in mind when discussing these released areas. Were the whole of the areas to be reserved for Natives only, it would not all represent additional land, for much is already owned and occupied by Natives. It would be instructive if it were possible to ascertain how much of these released areas is European and how much Native. The reports, already referred to, show the total additional land represented by their recommendations, but schedules attached to the Bill give no figures. And neither in the reports nor in the Bill are

we given any indication of the lands already owned or leased by Natives in the additional areas. One can safely assert, however, from one's own knowledge, that only a portion of the whole represents actual possible additions to Native areas.

It should be clearly realised, then, that, while

(1) the Bill is really a retrogade measure as compared with the purpose of the 1913 Act and the recommendations of the Beaumont Commission and the Local Committees, it puts the Natives in a worse position than they have been under the existing administrative practice.

(2) There is no guarantee that the released areas will yield the Natives any more land than they now hold.

(3) Even were the whole of the released areas to be reserved for Natives only, only a portion would represent an actual addition to Native areas, as much of the released areas is in Native occupation already.

(II)

In the previous article it was shown that General Hertzog not only does not "give" additional land to the Native people (as is popularly supposed), but that he also fails to observe the main principle of the Natives Land Act of 1913, the reports of the Commission and the Local Committees, i.e. there shall be a definitely guaranteed minimum of additional land set aside for Natives.

And not only does General Hertzog fail to guarantee the minimum, but he places such a number of restrictions upon the purchase of land by Natives, even in the released areas, that the prospect of their acquiring any more land is by no means encouraging. Reference has already been made to the provision that land wholly surrounded by Europeans cannot be bought by Natives. Let us read the Clause - Section XIV.

"Except with the approval of the Governor-General -

(a) .....

(b) No Native shall acquire in a released area, land which is wholly surrounded by land held by persons other than Natives".

While (a) provides for the converse, there can be no equality in this as long as Europeans are economically superior to Natives. It would be possible for Europeans to prevent any additional land in a released area being available to Natives by the simple expedient of refusing to sell any farms to Natives, particularly if anti-Native sentiment is fostered. The extent of equality before the law in this case is the extent of the economic equality of Europeans and Natives.

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Let us take another restriction. Section 1 (3) says

"Notwithstanding anything in this section contained, no association or aggregation of Natives, other than a recognised tribe, shall acquire land in a released area except under conditions prescribed by regulations ....."

If this clause means what it says (and it is quite certain that many of the clauses do not say what they mean), it is an attempt to prohibit the intelligent progressive class of Native from combining as companies or syndicates to buy land. I have known of Natives, not all of one tribe, who, because of their common intelligent interests, wished to start small civilised settlements away from the tribal customs. This section will hit the civilised Native. Would any European community ever tolerate such a restriction upon the right of association for lawful purposes?

More than this. Only Natives of the tribe (or tribes) specified in the Schedule of the Act, may acquire land in a particular released area. Only a Zulu may buy or lease land here, only a Xosa there, and so on. There may be sound administrative reasons for these limitations; but it should not be forgotten that General Hertzog wants this Bill to be the final word in the demarcation of land - now and forever. There is no provision for adjustments from time to time to meet changing conditions.

Nowhere in this Bill is any consideration shown for the emancipated progressive Native, except that individual tenure is not barred. In only one place throughout the whole of South Africa is there area set aside "for Natives of all classes", and that is the small Evaton Estate near Vereeniging. And yet it is the declared policy of the Government to drive the town Natives back to the land.

The recently published report of the "Carter" Land Commission in Southern Rhodesia lays it down that in the present Rhodesian reserves individual tenure should be encouraged, while in the additional areas communal tenure should not be permitted. The Native Affairs Commission of 1903/5 definitely recommended that the purchase of land which may lead to tribal or communal tenure should not be permitted. Experience in the Transkei and elsewhere has shown that with individual tenure comes progress.

But General Hertzog, - supported too by the bulk of South African opinion - believes that the Bantu people should be driven back into what is euphemistically called "Bantu Culture". While there is much that is admirable in Bantu life it is a grave mistake to think that "our" civilization will be safer if the Bantu people return to tribal life and culture. On the contrary, the progress of the individual Native in civilization is in the exact degree of his emancipation from the animism, witchcraft and communism of tribal life, and the bulwark of "our" civilization (most of which we have inherited or borrowed), are these keen, ambitious, progressive men and women of every race and colour, who are entrenching civilized ways of living, thinking and doing in their own lives.

It is here that we shall find the essential difference between the opposing views on these Bills. General Hertzog does not like the educated emancipated Native and

would prefer that all Natives were kept within the old tribal life. Speaking for myself I will say that, much as I deplore the evils which are bound to arise from the process of adjustment of the Native people into our civilized life, I believe the adjustment is both necessary and desirable. Every reasonable encouragement should be given to the individual Native who strives to press forward along civilized ways. Between these two views there can be no compromise.

General Hertzog will no doubt point out that he is being generous to the Native people by the provision for the establishment of a Natives Land Purchase and Advances Fund; but the resources of this fund are problematical, especially so when compared with those of the Union Land Bank. And the greater part of the revenue will be drawn from the very licences and fines which, as I shall show, are an abomination.

The first Chapter of the Bill fails to provide those safeguards which the tone and terms of the Prime Minister's Smithfield speech had led the country to expect. The Bill is ill-liberal and inelastic, making no provision for the growing needs of the people with whom it deals. Its framework is rigid and the machinery for its operation is defective.

But the real significance of the Bill is only fully realised by a careful study of Chapter II, which requires another article for itself.

(III)

In previous articles it was shown that General Hertzog has failed to provide the necessary minimum of Native land, and that unnatural restrictions are being imposed upon Natives in the acquisition of land, even in the areas released by the new Land Bill.

When we come to consider Chapters II and III of the Bill, we see how remorselessly it will drive the Native people to choose one of two alternatives: either to work for the European farmer on the farmer's own terms, or to go into the over-crowded Native areas. But the second choice is also limited by the serious implications of the Bill, as will be shown later.

Chapter II provides for the creation of "proclaimed areas" in which a Native may only reside if he comes under one of the following heads:-

(a) If he owns the land on which he lives,

(b) is a whole-time servant,

(c) is a licensed labour-tenant as provided in the Bill,

(d) is a licensed squatter as provided in the Bill,

(e) if the Native is a wife or minor child of any one of the above.

The main section (15) is by no means clear as to how areas may be proclaimed, but the intention seems to be to enable the Government to proclaim all European lands outside released areas, as land in which Natives, other than those classes exempted as above, may not stay.

The Government wants to end the squatting system. That the system should go, everyone will agree - at least every progressively-minded person condemns it. But how it is to be abolished raises an acute division of opinion. To understand the difficulties it is necessary to know the history of the squatter and to know how the proposed legislation will affect him.

The European lands on which Native squatters are found were, in most cases, originally held by the Natives themselves. When the Transvaal was occupied by Europeans the land was taken up by them, certain smaller areas being put aside as Native locations. It is true, of course, that many of the Natives were glad to get the protection of the white farmers against Native marauders. They and their families were allowed to remain on European lands on the condition that they either shared the proceeds of their crops with the farmer, or gave their own or their family's service during certain seasons. The Squatters' Law of 1895 was designed to control the numbers on each farm by limiting the total number of families to 5. The law, however, has been more honoured in the breach than the observance. Squatting is a wasteful, unprogressive form of farming labour. But as there are about 300,000 Native squatters in the Transvaal alone, any proposal to deal with them must receive very careful consideration.

The Bill proposes to limit the number of squatters by (a) imposing a licence of £3 for each squatter, (£5 where the farm is not actually occupied by a European), and (b) by controlling the number of licences through local Boards (subject to Ministerial veto).

The same method is to be applied to the labour tenant, who is described as an adult male Native, who is necessary to the owner's prosperity because his own or his family's services are useful, who is obliged to serve 180 days per annum (as against 90 days under the 1913 Act), and who gives nothing but his services for the right of residence on the farm.

Now, on the effect of these licences I cannot do better than quote the able report of the Eastern Transvaal Natives Land Committee of 1918, presided over by Mr. Ernest Stubbs, the present Magistrate of Rustenburg. Protesting against the licensing proposals of the 1917 Bill, the report says:-

"The object of these provisions is no doubt to abolish squatting and labour tenancy conditions and to reduce all Natives resident in non-Native areas to the level of full-time servants within the meaning of the Bill. Any Native in a non-Native area who is not already a servant is, therefore, liable to be faced with the alternative of becoming one, or of moving into a native area; and, in any case, even in the possible contingency of his being allowed to remain as a squatter or labour-tenant, he remains subject to the payment of an annual licence fee.....

"It may be premised, as a general proposition, that the

squatter in a non-native area will not be in a position to pay the licence money which, though chargeable to the owner of the land, will, as a matter of course, be recovered from the tenant. He will either have to become a servant (for even as a labour-tenant he is subject to licence), or move into the Native area. Whilst declining to become a servant, he may or may not decide to move, but in any case he will not pay the licence money simply because he cannot. If he decides not to move, it is interesting, though not germane to the enquiry, to speculate on the machinery that will be employed to compel him to do so; whether admonition will suffice, or whether, in the other extreme, physical force may not be necessary; and again, assuming that physical force is used, to what lengths in the employment of it authority will be driven in order to secure the full attainment of its ends. In any case, if the squatter decides to move, as he may well do when confronted with the panoply of law and order, it becomes a matter of vital importance to decide whether, in fact, the areas are ready to receive him.

"Now, the question whether the areas are ready to receive a sudden large access of population is not a question of extent. It is not even a question of quality. It is a question wholly of "development". A family might well starve on the most fertile soil in the world in the interval that is necessary to reduce it into a condition of productivity. And, from the nature of the case, native areas are almost entirely undeveloped. The developed portions are the occupied portions. It is in the undeveloped residue that the native from the non-native area must seek an asylum.

"To transport natives even from the exiguous conveniences of settled life in non-native areas suddenly and in large masses to areas which they still have to prepare before they can exist in them, would be disastrous in the extreme. In the opinion of the Committee, there is no alternative but the entire withdrawal of the licence provisions of the Bill. Why should it not be sufficient merely to prohibit fresh squatting and allow existing squatters to continue without impediment until they disappear in the course of a generation? Why should it be necessary indeed, to attempt to abolish squatting in a breath, as it were, and by a mere stroke of the pen? Economic forces are at work which are bound, in due time, to cause the total extinction of squatting in any event.

"As the country becomes more closely occupied from squatting to labour-tenancy and from labour-tenancy to the condition of the full-time servant is but a step. We have seen the process throughout all its stages at work in the Cape Province and the Orange Free State. We see it running its course today in the Transvaal, as various areas are thrown open to white settlement. Granted that the squatting evil is flagrant, any attempt to extinguish it suddenly can end only in the creation of a new situation worse than the old. The Committee is confident that the utmost that can be hoped for, on lines of fairness and justice, is the extimction of squatting within a generation. To bring this about involves merely the refusal of fresh facilities - a very different thing from the utter deprivation of facilities already granted or, at any rate,

already tolerated. By these means the evil will disappear gradually but surely, without offence and without the unpleasant odour of victimisation which surrounds the licence provisions of the Bill".

As the Bill stands, the Native areas may also be "proclaimed", in which case out must come the surplus Natives to take full-time service on European farms. This is perilously near "forced labour"; it certainly is not free labour - free to offer or to decline service according to the terms of service. It certainly is not free when the alternatives offered are service or prison.

What the effect of this surplus un-free labour will be upon the fate of the European byvoners and farm-labourers, is a question which is perfectly pertinent to this discussion. For the depression of one class in the community always proves a menace to other sections, and the effect of this Bill may well be to displace large numbers of European farm workers. Certainly the popular policy of today is all in this direction. The displacement of Natives in Industry; the Colour Bar Act; the stringent Native Pass Laws; the high cost of living; the neglect of Native Agricultural Training and the inadequacy of Native areas; and now the creation of serf labour; all these are the consequences of the present policy, and their cumulative effect will be to drive the European farm labourers into the towns, to depress the Native population, to create grave unrest and to drive the Natives into despair. Meanwhile the general development of the Union will receive as serious a set-back as any enemy could wish.

(IV).

The Native Franchise in the Cape has long been a hateful thing to the Northern Provinces, and it need not be wondered at that Natives were suspicious of the Prime Minister's Smithfield speech because of his declared intention to substitute the Cape Franchise for something new and different. Previous articles have shown how the Land Bill is to turn into ashes in the mouth of the Native people. For the benefits of the Land Bill the Natives are asked to forego the Cape Franchise and to accept a further gift. In this case at least, the Natives are justified in "looking the gift horse in the mouth".

The Cape Native Franchise is a substantial thing. While only 15,000 Natives are registered voters, even this number was sufficient to remind the old Cape Parliament that the Natives, too, are members of the household. A recent tour of the Ciskei and Transkei produced ample proofs of what the vote has done for the Natives. And, by contrast, the return to the Transvaal emphasised the

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appalling poverty and backwardness of Native life in the Province.

And the Cape Native values his vote. He follows the course of events with great keenness. A Cape Parliamentarian recently described to me the many requests for Hansards and reports sent in by Native voters. Nor has the Native voter abused his privilege. One need only think of the men who have gone to Parliament on the Native vote, amd one need only mention Saul Solomon, W.P. Schreiner, T.L. Schreiner, Sir Fisset Berry, and J. W. Sauer, to be compelled to admit that the Native knows a good man when he sees him. The truth is that the Native voter is, generally speaking, an ambitious man who wants for himself those things that Europeans also value. His best interests are identical with the best interests of the Europeans.

Even at the lowest valuation the Native vote cannot be the extreme danger that General Hertzog has pictured it to be; for, even were there a million Native voters in the Cape, they could only send Europeans to Parliament. Will General Hertzog or Mr. Tielman Roos assert that the quality of the Cape Member is inferior to that of the Transvaal or Orange Free State?

In place of the personal direct vote of the Cape, the Native people of South Africa are to be asked to accept a franchise in which a Government-nominated, Government-controlled electorate will elect 7 Members of Parliament who may only sit, speak or vote upon a narrowly restricted range of topics, or as long as they do not endanger the Government.

As for the electorate, Clause 3 (c) and (d) of the Union Native Council Bill provides for the election of the 7 members

(1) In the case of tribal Natives, through such Chiefs, Headmen, or Members of the Local Council (if any), as are "designated by the Government".

(2) In the case of de-tribalised or town Natives, through representatives "likewise designated by the Government".

The total Native electorate for the Union may be 50 or 50,000!

And what self-respecting European will want to enter Parliament as a despised poor relation who may only "sit, speak or vote" when graciously permitted by the Prime Minister".

The whole thing is a farce. If the scheme is put forward as a genuine "quid pro quo", one can only describe the proposals as showing a lack of political insight to an appalling degree. It has not deceived the Native people, and they are to be commended for showing a determination not to abandon the precious substance of the full, free, personal and direct vote of the Cape for the shadow, the snare and the delusion of the present Franchise Bill.

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Since the electorate of the Union Native Council is the same as that for the Union Parliament, the same criticism applies. And in this case the Natives will prefer to carry on with the existing informal annual conference than to accept the statutory Council as part of the barter price for the Cape Franchise.

Neither in the Land Bill nor in the Franchise Bills is there any hope of that "final settlement of the Native question" which General Hertzog has loudly proclaimed and which the country has been more than half convinced was coming.

Nor will there ever be a "final settlement" while there exist two opposing schools of thought upon the fundamental issues involved. And, even were there agreement on these, human society is never so static that human activity can be confined within the narrow confines of narrow legislation. Human society is a living organism subject to change and growth, and in all human relations there must be constant adjustment and re-adjustment. Thus it is that ideas of "total morgenage","territorial segregation" and "political ostracism" must prove futile.